Supreme Court, U.S.
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(3)

No. 00-1652

In The

Supreme Court of the United States

WILLIAM O. JORDAN,

Petitioner,

v.

FRANK L. ZORC,

Respondent.

On Petition For Writ Of Certiorari To The District Court Of Appeal Of Florida

REPLY TO BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Respondent states that Petitioner "hired an appraiser who valued [his] property at $50,000" (Resp's Brief p. 1). That is untrue. It is unequivocal that the appraiser valued Petitioner's property at $34,000.

The fact that the City Council violated the Sunshine Law has no bearing on the defamatory nature of the statements made by Respondent about Petitioner.

ARGUMENT

Respondent does not even address whether the Florida District Court applied an incorrect standard of review by conducting a *de novo* review of all issues, rather than just the issue of actual malice. Respondent's silence on this issue apparently acknowledges that the wrong standard of review was utilized by the Florida court.

Respondent's argument is that after *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710 (1964), a public official "can almost never" recover from a citizen for defamation, because he cannot show actual malice. Respondent overlooks *Milkovich v. Lorain Journal Co.*, 110 S.Ct. 2695 (1990); *Harte-Hanks Communications, Inc. v. Connaughton*, 109 S.Ct. 2678 (1989); *Yetman v. English*, 811 P.2d 323 (Ariz. 1991) *en banc*; and *Ball v. E.W. Scripps Co.*, 801 S.W.2d 684 (Ky. 1990), to name just a few cases finding evidence of actual malice sufficient to allow a jury to determine the issue.

Respondent argues that Florida law supports the Florida District Court's ruling. However, Florida law on defamation is the same as federal law on defamation. In

fact, the opinion of the Florida District Court in this case cites as accepted authority *New York Times v. Sullivan, supra; Milkovich v. Lorain Journal Co., supra;* and *Harte-Hanks Communications, Inc. v. Connaughton, supra,* all of which require reversal.

"Actual malice" was sufficiently demonstrated in this case. "Actual malice" is proven by demonstrating misstatements of fact made with knowledge of their falsity, or reckless disregard of whether they are false or not. *New York Times Co. v. Sullivan,* 84 S.Ct. at 725-26. Rarely will a party confess to actual knowledge of falsity, or a high degree of awareness of falsity or serious doubts as to the truth of the publication. Nevertheless, a plaintiff is entitled to prove a defendant's state of mind through circumstantial evidence. *Harte-Hanks Communications, Inc. v. Connaughton,* 109 S.Ct. at 2686. Here, juxtaposing Respondent's trial testimony with the defamatory statements contained in the five documents in question, demonstrates that Respondent was aware the statements were untrue, and yet he published them nonetheless. The conclusion that Respondent acted with actual malice inextricably follows.

CONCLUSION

For the reasons stated, certiorari should be granted.

Respectfully submitted,

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